IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 154 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PRABHUDAS MAFATLAL PAREKH - Applicant(s)
Versus
STATE OF GUAJARAT & 1 - Respondent(s)

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Appearance :
MR JD AJMERA for Applicant(s) : 1,
PUBLIC PROSECUTOR for Respondent(s) : 1,
NOTICE SERVED for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 14/08/2007

ORAL JUDGMENT

Rule. Shri Mengdey, ld. APP waives service of rule on behalf of the respondent State. With the consent of parties, the matter is taken up today for final hearing.

2. By way of this petition under Article 227 of the Constitution of India, the petitioner has prayed for an appropriate order quashing and setting aside the order passed by the ld. Addl. Sessions Judge, Fast Track Court No.1, Bhavnagar dated 15-3-2005 passed in criminal appeal No.38 of 2000 to the extent it is against the petitioner i.e. ordering to confiscate 154 LPG cylinders.

3. Shri JD Ajmera, learned advocate appearing on behalf of the petitioner has vehemently submitted that out of 154 LPG cylinders for which the confiscation order is passed, 70 LPG cylinders were not even part of the seizure order and therefore, no order could have been passed confiscating the same and to that extent, the order passed by the learned trial Court requires to be quashed and set aside.

4. Shri Mengdey, ld. APP under the instruction from the respondent has submitted that it is true that so far as 70 LPG cylinders are concerned, they were not part of seizure order, however, he has submitted that so far as the said 70 LPG cylinders are concerned, a criminal case is already filed against the applicant which is pending being criminal case No.2374 of 2003 in the Court of ld. 6th Joint (SD) and JMFC, Bhavnagar and in fact the petitioner has also moved an appropriate application for custody of the said cylinders under section 451 of CPC which is pending before the said Court.

5. Considering the fact that so far as 70 LPG cylinders are concerned, they were not part of the seizure order and therefore, there is no question of passing any order of confiscation of the said 70 LPG cylinders. Under the circumstances, the order passed by the learned trial Court in so far as confiscating the aforesaid 70 LPG cylinders, which were not part of the seizure order requires to be quashed and set aside. So far as remaining LPG cylinders are concerned, it cannot be said that there is any illegality committed by the learned trial Court which requires interference of this Court

in exercise of powers under Article 227 of the Constitution of India.

6. Shri Ajmera, learned advocate appearing on behalf of the petitioner has not been able to point out any irregularity and/or illegality in the order passed by the learned trial Court so far as the remaining LPG cylinders are concerned and to that extent, the order passed by the learned trial Court requires to be confirmed.

7. For the reasons stated above, the petition succeeds in part. The order passed by the learned trial Court impugned in the present petition is hereby quashed and set aside so far as 70 LPG cylinders are concerned which are not part of the seizure order and for rest LPG cylinders, the impugned order is confirmed. It is reported that for the 70 LPG cylinders, criminal case No.2374 of 2003 in the Court of ld. 6th Joint (SD) and JMFC, Bhavnagar and in the said case, the application under section 451 of Criminal Procedure Code is submitted, it is observed that the said application shall be decided in accordance with law and on its own merits without in any way being influenced by the present order. Rule made absolute to the aforesaid extent.

(M.R. Shah, J.)

shekhar/-